

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

WAYNE EDWARD HANDY #11202-078 §
§
v. § Civil Action No. 6:07-cv-300
§ Criminal No. 6:04-cr-91
UNITED STATES OF AMERICA §

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that Handy's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 should be granted, in part, and denied, in part. Handy has filed objections.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Handy to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.¹ It is accordingly

ORDERED that Handy's motion to vacate, set aside, or correct his sentence pursuant to 289 U.S.C. § 2255 is **GRANTED**, in part, and **DENIED**, in part. It is further

¹ The Court notes, however, that the second to last sentence on page 4 should read: Counsel's representation was deficient with respect to the duplicative sentence, and Handy was prejudiced by such deficient representation.

ORDERED that relief is **GRANTED** to the extent that a new Judgment will be entered in Criminal No. 6:04-cr-91 on only one count, with the remaining count dismissed.

It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 15th day of October, 2008.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE